

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

FILED
UNITED STATES DISTRICT COURT
LAS CRUCES, NEW MEXICO

UNITED STATES OF AMERICA,


Plaintiff,

vs.

ELINA SIHOMBING and DAVID GIRLE,

Defendants.

CR-11-2237 RB


JAN - 9 2012
11:15 AM
MATTHEW J. DYKMAN
CLERK

ORDER CONTINUING MOTIONS DEADLINE AND TRIAL SETTING

This matter is before the Court on Defendant's Unopposed Joint Motion to Continue Motions Deadline and Trial Setting. The Court having reviewed Defendant's motion, having been advised that Assistant U.S. Attorney Jessica Jarvis does not oppose this motion, and; further, the motion by Defendant's having been filed in accordance with the provisions of 18 USC § 3161 (h)(7)(a) and it appearing that the ends of justice served by allowing this continuance outweigh the best interest of the public and the Defendant in a speedy trial; the Court thus being fully advised in the premises finds that Defendant's motion is well-taken and should be granted.

The Court having considered the motion and subsequent to a hearing to determine the appropriate length to continue the trial, being fully advised in the premises and in light of the recent holding in United States v. Toombs, 574 F.3d 1262 (2009), finds that Defendant has by his motion, created a sufficient record to justify granting the motion to continue. See *id.*, 574 F.3d at 1271 (requiring that the record on a motion to continue "contain an explanation of why the mere occurrence of the event identified by the party as necessitating the continuance results in the need for additional time").

1. Defendants are presently scheduled for call of the calendar on January 5, 2012, and trial on January 17, 2012.

2. Defendants Sihombing and Girle were indicted on August 17, 2010, and arraigned on September 2, 2011.

3. Counsel for Sihombing has diligently undertaken to reviewed all Discovery provided to date in this matter. Certain additional Discovery was provided by the United States Attorney on December 21, 2011, consisting of some 20 additional pages and 7 CD's of photos, audio and video interviews. Neither counsel for Sihombing nor counsel for Girle has yet had the opportunity to review the actual video and audio CD's with their respective clients. Both counsel deem such review necessary to evaluate the merits of ongoing plea negotiations and to prepare for trial if necessary.

4. Counsel for the Defendants did meet with AUSA Jessica Jarvis and other members of the United States Attorney's Office on December 21, 2011 to discuss this matter. Issues discussed included a potential resolution without the necessity for trial, and certain Discovery regarding Defendant Sihombing's naturalization background check, that Sihombing deems necessary should this matter go to trial. Request was made of the United States Attorney's Office to obtain this portion of Sihombing's A-file or naturalization file as the case may be. Additional time is necessary to obtain this information.

5. In response to the December 21, 2011 meeting, a plea offer was received by Defendants by e-mail on December 30, 2011. Counsel for Defendants are scheduled to meet with their clients on January 2, 2012 to discuss the plea offer. Counsel will not be in a position to entirely evaluate the existing plea offer until that meeting is held, and counsel have also finished review of all discovery referenced above with their clients. Both Defense counsel do anticipate further negotiations to resolve this matter without trial.

6. Counsel submit all parties have made a diligent effort to date to bring this matter to resolution, that any delay resulting from this continuance is necessary for Defense counsel to review recently provided Discovery with their clients, which is deemed necessary to provide an adequate assistance of counsel, for Defense counsel to obtain additional Discovery requested

from the United States, which is deemed necessary to provide an adequate assistance of counsel, for Defense counsel to adequately evaluate the merits of the respective December 30, 2011 plea offers, and for Defense counsel to adequately prepare for trial should trial be necessary

IT IS HEREBY ORDERED that Defendant's Motion be granted; and that the motions deadline and trial setting is continued for thirty (90) days; **THERE WILL BE NO FURTHER CONTINUANCES SOUGHT OR GRANTED.**

IT IS HEREBY ORDERED that Defendant's Motion for Extension of Time to File Motions until March 16, 2012 be granted; and that Defendant's Motion for Continuance of the Trial Setting until April 16, 2012 at 9:00 am be granted; and that pursuant to 18 U.S.C. section 3161(h)(7)(A), the delay resulting from the continuance shall be excluded for purposes of the Speedy Trial Act.



UNITED STATES DISTRICT JUDGE